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No. 83-1332

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

RIVCOM CORPORATION,

Petitioner,

v.

AGRICULTURAL LABOR RELATIONS BOARD, and
UNITED FARM WORKERS OF AMERICA, AFL-CIO,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF CALIFORNIA

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

Respondent Agricultural Labor Relations Board ("ALRB") opposes Petitioner Rivcom Corporation's[1/] petition for certiorari with an amalgam of legalistic rhetoric, on the one hand, and evidentiary hide-and-seek on the other. It attempts to avoid the thrust of this Court's decision

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1/ Rivcom Corp. is a wholly-owned subsidiary of Riverbend Farms, Inc.

in Bill Johnson's Restaurants, Inc. v. NLRB, 103 S. Ct. 2161 (1983), by holding up the veil of primary jurisdiction. It then attempts to dispose of Rivcom's Supremacy Clause concerns by faulting Rivcom for not introducing evidence the agency itself vigorously and successfully opposed. As is demonstrated below, both these efforts must fail.

I. Access To Courts

The ALRB seeks to sidestep the effect of Bill Johnson's by characterizing the conflict between the Board's order and the municipal court judgment as a mere question of "primary jurisdiction." Thus, the argument goes, anything "arguably protected" by the Agricultural Labor Relations Act comes within the Board's primary jurisdiction and that alone gives the Board the exclusive right to make the "initial determination as to whether arguably protected

conduct is in fact protected." Brief in Opposition of Respondent Agricultural Labor Relations Board ("Opp.") at 12. Rivcom's argument, the Board asserts, would "destroy" the doctrine of primary jurisdiction because "a State could never vest exclusive primary jurisdiction of a subject matter in an administrative agency and divest its courts of jurisdiction to adjudicate controversies within the agency's area of expertise." Opp. at 16.

This "floodgate" argument is so exaggerated that even the Board has to acknowledge its flaws. Thus, the Board is admittedly unable even to "pretend" that the State Supreme Court's decision "had no impact whatsoever" on the municipal court judgment. Opp. at 10. Moreover, it is forced to acknowledge the "evident conflict between the two orders." Opp. at 10. Indeed, the Board even admits that "the precise question of whether the

municipal court is bound by the findings of the Board has yet to be squarely decided." Opp. at 12. This question, it suggests, will be "before the superior court in the appeal of the municipal court judgment," Opp. at 11, and may eventually "require final resolution by the State Supreme Court." Opp. at 13.

That precise question, however, has already been answered by this Court in Bill Johnson's -- and its conclusion was that the agency must be bound by the court's findings of fact.

> When a suit presents genuine factual issues, the state plaintiff's First Amendment interest in petitioning the state court for redress of his grievance, his interest in having the factual dispute resolved by a jury, and the State's interest in protecting the health and welfare of its citizens, lead us to construe the Act as not permitting the Board to usurp the traditional fact-finding function of the state-court jury or judge. Hence, we conclude that if a state plaintiff is able to

> present the Board with evidence that shows his lawsuit raises genuine issues of material fact, the Board should proceed no further with the . . . unfair labor practice proceedings but should stay those proceedings until the state-court suit has been concluded.

103 S. Ct. at 2171-72. Contrary to the ALRB's professed fears, this Court evinced no concern that its Bill Johnson's decision might "destroy" the primary jurisdiction of the National Labor Relations Board.

Simply put, the flaw in the ALRB's argument is this: Bill Johnson's did not effect a total substitution of court for agency. Rather, the case held that genuine issues of material fact and genuine state-law legal questions must be resolved in a judicial, rather than an administrative forum. 103 S. Ct. at 2171-72. Those factual and legal findings are binding to the extent they overlap with issues before the agency.

The Board further mischaracterizes Rivcom's position when it states the truism that "Bill Johnson's manifestly does not stand for the proposition that California is powerless to place limits on petitioner's use or abuse of the State's judicial processes. In fact, as a matter of California law, petitioner does not have an absolute right to judicial process for eviction." Opp. at 14-15 (emphasis in original). Again, the Board misses the thrust of this Court's ruling. Bill Johnson's and the federal constitutional law on which it is based provide only that an agency cannot cut off access to courts; they do not guarantee a victory there. California properly can and has fenced in the right to use its judicial processes by requiring that an eviction not be pursued in retaliation for the exercise of protected rights. The issue of whether an

eviction was retaliatory, however, must be decided by the court, not by the ALRB.[2/] Rivcom argues only that whatever the outcome of the state court proceedings, the court's factual and legal conclusions must govern in the administrative forum as a matter of constitutional right.

Having failed to impeach Bill Johnson's on the law, the ALRB seeks to distinguish it factually. Bill Johnson's, we are told, cannot govern the instant case because court proceedings in that case were enjoined, while in Rivcom's case "there is no injunction of the municipal court judgment; there is only an apparent conflict between the order of the Board

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2/ In this case, the municipal court ruled that there was no retaliatory motive behind Rivcom's attempts to evict the tenants. Appendix to Petition for Certiorari at 190a.

and the non-final judgment of the municipal court." Opp. at 13.[3/] While it is true that no "injunction" was actually issued against the unlawful detainer action, the State Supreme Court's decision "stayed enforcement" of the judgment in that action exactly as an injunction would have.[4/]

Indeed, the ALRB's depiction before this Court of the municipal court judgment as tentative and non-final is completely at odds with the position the Board has

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3/ That the municipal court's judgment is subject to appeal and may be "non-final" is irrelevant for purposes of this case. This Court did not discuss any need for finality in Bill Johnson's; indeed, so far as appears from the reported decision, the trial court in that case had not yet issued any decision.

4/ The Supreme Court stated in its October 1983 decision, "[w]e have stayed enforcement of [Rivcom's unlawful detainer] judgment pending resolution of this action." Appendix to Petition for Certiorari at 32a.

advanced throughout the course of this litigation, including its most recent filings. For example, in a brief filed with the California Second District Court of Appeal on March 15, 1984,[5/] the ALRB insisted that the Board's order, as enforced by the Supreme Court's October 1983 order, conclusively precludes Rivcom from either evicting the tenants or demolishing the housing -- thus leaving Rivcom only one course of action: to expend millions of dollars on repairs.

5/ As noted in Rivcom's petition for certiorari, an appeal of the California Second District Court of Appeal's decision of July 29, 1983, vacating a lower court injunction that ordered Rivcom and Newport to repair the housing, was pending before the State Supreme Court in October 1983, when it issued the order under review. Petition for Certiorari at 11-12. On February 2, 1984, the California Supreme Court remanded that case to the appellate court for reconsideration in light of the Supreme Court's October 1983 decision. The brief referred to in the text was filed with the appellate court after that remand.

The ALRB cannot have it both ways. Its attempt to obscure the issues before this Court by focusing on the distinction between an "injunction" and a "stay" is specious and must be rejected.

II. Supremacy Clause

The ALRB makes two arguments in response to Rivcom's position that the order under review violates the Supremacy Clause because it requires Rivcom to maintain housing that does not and, as a practical matter, cannot meet the applicable standards of federal law.

First, the ALRB incorrectly asserts that this issue was not raised below. Opp. at 18. In fact, the issue was raised both before the ALRB itself[6/] and in the

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6/ See Brief In Support Of Exceptions To The Decision Of The Administrative Law Officer (filed July 6, 1979), In the Matter of Rivcom Corp., ALRB Case Nos. 79-CE-1-OX and 79-CE-4-OX, at 96-97.

judicial appeal from the Board's decision.[7/] The Board cannot seriously claim to have been without notice of this issue.

The second prong of the ALRB's attack is the assertion that "there is no record evidence supporting Rivcom's assertion that the housing on Rancho Sespe is hazardous or unfit for human habitation, as petitioner now contends." Opp. at 18 (emphasis in original). Thus, we are told, "[n]one of the evidence regarding the condition of the housing that was before the municipal court was before the ALRB or the State Supreme Court." Opp. at 9 n.4.

In the first place, the ALRB's blanket assertion is false. The record compiled

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7/ See Rivcom Corporation's Memorandum Of Points And Authorities In Opposition To ALRB's Petition For Temporary Relief Staying A Ventura County Municipal Court Action (filed Oct. 18, 1979) at 20-21, and Rivcom's Opposition Brief To ALRB's Second Petition For Temporary Relief (filed Feb. 11, 1980) at 20, Rivcom Corp. v. ALRB, No. 5 CIV 5121 (Cal. 5th Dist. Ct. App.).

before the Administrative Law Officer does contain evidence substantiating the dilapidated condition of the housing at the time Rivcom entered the lease. Indeed, counsel for the ALRB expressly admitted during the hearing that "[t]here is evidence in the record concerning the condition of the property," and offered rebuttal evidence. Tr. Vol. XVII, at 55.

Moreover, the ALRB fails to reveal to this Court the reason why there is only limited record evidence on this issue: the agency itself consistently and successfully opposed the introduction of such evidence at every step of the proceedings.

During the hearing before the Administrative Law Officer, Rivcom presented, over objection, the testimony of John Kirkpatrick, a citrus farmer from a neighboring area. Mr. Kirkpatrick spent five or six hours touring Rancho Sespe on March 3, 1979, approximately a month and a

half after Rivcom leased the ranch. Tr. Vol. XI, at 156. He observed the labor camps and described the houses there as "old and obsolete." Id. at 173-74. Dick Richardson, another local farmer, testified that he viewed the labor housing about a year before the hearing, and that it was "in poor condition" and a "firetrap." Tr. Vol. XIII, at 56-57, 61, 63. Mr. Harris himself testified that Rivcom had been noticed by the county for having inadequate domestic water and sewage systems in the labor housing, among other problems, and that at the time of the hearing the federal Department of Labor was investigating Rivcom for illegal maintenance of a labor camp. Tr. Vol. XIV, at 220-22, 225. Mr. Harris' testimony concerning the state of the ranch's water and sewage systems was corroborated by Robert Gallagher, a Ventura County health official. Tr. Vol. XVII, at 61-62.

On the objection of ALRB counsel, the Administrative Law Officer permitted the introduction of further testimony to corroborate the "terrible condition" of the housing not for its truth, but solely to rebut any inference that Mr. Harris secretly intended not to raze the housing. Tr. Vol. XVI, at 176-78.

In its exceptions to the Administrative Law Officer's decision, Rivcom objected to the Administrative Law Officer's failure to find that the camps are in poor condition. Exception No. 162. Rivcom also asked the California Court of Appeal to take judicial notice that the housing had been declared to be "defective to an extent that the life, limb, health and property of the dwelling occupants. . . is endangered."[8/]

8/ Petitioner Rivcom Corporation's And Petitioner Riverbend Farms, Inc.'s Request

(footnote continues)

not responsible, or to violate federal law. The issue cannot be smoothed over, as the ALRB attempts to do, by the bland assertion that this case does not merit this Court's attention because "[t]he Board's order manifestly requires no violation of federal law." Opp. at 21. The effect of the Board's order is to force Rivcom to violate federal law by keeping a substandard camp open and occupied.

CONCLUSION

The course pursued by the ALRB and the California courts throughout this litigation betrays a studied disregard for the constitutional principles this Court elaborated in its Bill Johnson's decision. By permitting the decision below to stand, this Court will allow the ALRB to leverage its constitutional violations into an intolerable choice for the petitioner:

either to expend vast sums to remedy conditions for which it is not responsible, or to continue to violate federal law. Thus, Rivcom respectfully requests that its petition for certiorari be granted.

Respectfully submitted,

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Finally, as the Board itself notes, Rivcom asked the State Supreme Court to take judicial notice of documents showing that the labor housing had been condemned as unsafe and uninhabitable. Opp. at 19. This request was denied, although the court assumed, without deciding, that the events depicted therein were true. Appendix to Petition for Certiorari at 33a n.34.

Evidence showing that the labor housing was in sorely dilapidated condition before Rivcom leased the ranch is indeed relevant to the Board's order, which requires Rivcom "to maintain the housing in habitable condition." Id. The California Supreme Court's order requires Rivcom either to expend millions of dollars to remedy conditions for which it was

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8/ (footnote continued)

For Judicial Notice; And Memorandum Of Points And Authorities In Support Thereof (filed Dec. 31, 1981), Rivcom Corp. v. ALRB, No. 5 CIV 5121 (Cal. 5th Dist. Ct. App.) at 1.